IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 275 OF 1993

IN

SUIT NO. 535 OF 1993

Lakhan Moorajmal
Gurnani and anr. .....**Plffs.**
vs.
Stanley J. Roaazario and anr. .....**Defnds.**

K.H. Mody i/b. Haridas and Co.
for the plaintiffs.
U.J. Makhija i/b. A.D. Kango
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 29th September, 2005.

P.C. :.

1. The present notice of motion is filed for specific performance inrespect of residential flat consisting of two bedroom i.e. drawing room and kitchen being flat no.104, Green Gates, 693, Perry Road, Bandra (W), Bombay-400 050 together with five shares of the Green Gates Premises Co-op Hsg. Soc

bearing distinctive no. 16 to 20 under the share certificate no.4 of the face value of Rs.50/- per share.

2. The present suit is based on oral agreement and there is no agreement in writing between the parties. However the learned counsel appearing for the plaintiff has contended that there is a concluded and valid and binding agreement between the parties for the sale of the flat for Rs.24.19 lacs. In support of the aforesaid contention he has relied upon the following evidence.. Firstly he has contended that in the meeting held at the residence of the defendants in the month of January 1992 in the presence of one Prashant Dave, Chartered Accountant, it was agreed that the defendant will sell the flat to the plaintiff for the aforesaid amount of Rs.24.19 lacs. It is further contended that in view of the said agreement being finalised the plaintiff paid the sum of Rs.2.00 lacs by cheque to the defendant which the defendant had encashed. He further relied upon the documents prepared by the said

Prashant R. Dave (C.A.). Insupport of the contention that there is a concluded and binding agreement between the parties inrespect of the sale of the said flat. He has also relied upon a letter dated 5.12.93 being Ex.F to the plaint. Thereunder the defendant has refunded the said sum of Rs.2 lacs. I have considered the aforesaid documents and I am of the opinion that the said documents and the various facts pleaded by the plaintiff. I am unable to come to the conclusion that this does not create a concluded and binding agreement between the parties particularly as to the various terms and conditions of the said agreement for sale of the said flat. Merely because the drafts are prepared it cannot be stated that the documents are valid and binding is if it is duly executed. Learned counsel for the plaintiff has also relied upon an affidavit of Prashant.R. Dave(C.A.) who has confirmed the preparation of such a draft document. However he has himself stated in the said affidavit that there is no final, concluded and binding contract between the parties. In that view of the matter it is not possible to grant any

ad-interim order in the present suit. Motion dismissed.

2. Ad-interim order granted to continue for a period of two weeks so as to enable the parties to file an appeal.

sd/-

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